IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FREDERICK L. FITZWATER and BRENDA FITZWATER, His Wife,	)	
	)	Civil Action No.
Plaintiffs	)	
	)	Civil Action Complaint
v.	)	
	)	
MEDICINE SHOPPE INTERNATIONAL, INC., A Corporation and CAIS, INC., d/b/a PHARMA CARE INFUSION SERVICES, INC, A Corporation,	)	
	)	
Defendants	)	

CIVIL ACTION COMPLAINT

AND NOW, come the Plaintiffs, FREDERICK L. FITZWATER and BRENDA FITZWATER, His Wife, by their attorneys, Samuel J. Pasquarelli, Esquire and Sherrard, German & Kelly, P.C., and file the within Civil Action Complaint against the Defendants, MEDICINE SHOPPE INTERNATIONAL, A Corporation and CAIS, INC., d/b/a/ PHARMA CARE INFUSION SERVICES, averring in support thereof the following:

INTRODUCTION

1. The Plaintiffs bring this action relative to their claim for personal injuries to the Plaintiff, Frederick L. Fitzwater ("Mr. Fitzwater") and the loss of consortium to the Plaintiff, Brenda Fitzwater ("Mrs. Fitzwater"), his wife, pursuant to the facts hereinafter averred.

PARTIES

2. Mr. Fitzwater is an adult individual now residing at 2636 Pysell Crosscut Road, Oakland, Garrett County, Maryland and he is a citizen of the State of Maryland.

3. Mrs. Fitzwater is an adult individual now residing at 2636 Pysell Crosscut Road, Oakland, Garrett County, Maryland and she is a citizen of the State of Maryland. She is the wife of Mr. Fitzwater.

4. The Defendant, Medicine Shoppe International, Inc. ("Medicine Shoppe") is a corporation believed to be incorporated and existing under the laws of the State of Missouri, with its principal office located at 1 Rider Trail Plaza Drive, Earth City, MO 63045.

5. The Defendant, Cais, Inc., d/b/a Pharma Care Infusion Services ("Pharma Care") is a corporation believed to be organized and existing under the laws of the State of Maryland, with its principal office and place of business located at 3 Commerce Drive, Cumberland, MD 21502.

JURISDICTION AND VENUE

6. The claims asserted herein are cognizable by virtue of the diversity of citizenship of the parties and an amount in controversy, which exceeds $75,000.00, based on the information and belief of the Plaintiffs. As such this Court has original jurisdiction pursuant to 28 U.S.C., Sec. 1332.

7. Pharma Care is a franchisee of Medicine Shoppe and its existence is believed to be due to the existence of a franchise agreement between Medicine Shoppe and Pharma Care. The Plaintiffs are not in possession of any such agreement.

8. By virtue of its contacts within this district, including the transaction of business in various counties in the Western District of Pennsylvania, including the sale of pharmaceuticals and drugs and the establishment of franchises in the Western District of Pennsylvania, Medicine Shoppe does business within this district. Therefore, venue is proper relative to Medicine Shoppe in this district pursuant to 28 U.S.C., Sec. 1391.

9. By virtue of its contacts within this district, including the transaction of business in various counties in the Western District of Pennsylvania including the sale of pharmaceuticals and drugs, including infusion drug products, Pharma Care does business within this district. Therefore, venue is proper relative to Pharma Care in this district pursuant to 28 U.S.C., Sec. 1391.

STATEMENT OF FACTS
FREDERICK L. FITZWATER V. DEFENDANTS

10. On or about April 22, 2013, Mr. Fitzwater was injured in the court of his employment when he suffered an injury to his left knee.

11. Because of his aforesaid injuries, Mr. Fitzwater underwent various surgical procedures on his left knee.

12. As part of his post-surgical treatment, Mr. Fitzwater was required to undergo the infusion of a drug known as Invanz into his left knee. This infusion was to be performed at his home pursuant to instructions to be provided by the manufacturer of Invanz.

13. The Invanz which was to be infused into Mr. Fitzwater's body was infused by the connection of a supply of said drug contained in a soft container to ports which were implanted into Mr. Fitzwater's knee and after that connection, the drug was to be infused by virtue of the connection of the supply of the drug to the ports and without any further human intervention.

14. The drug was to be infused into Mr. Fitzwater's body over a period of not less than thirty minutes, with the infusion rate being established by the manufacturer of the drug in such a way that when the drug supply was connected to the ports, the rate of infusion was pre-established and the infusion began without any further involvement by any person.

15. The infusion processes described above began on or about March 13, 2014.

16. The infusion processes occurred in Oakland, , Garrett County, Maryland.

17. The Invanz and the infusion devices were ordered from and delivered by Pharma Care to the Plaintiffs from Cumberland, Maryland.

18. When the infusion processes began, the Invanz was infused into Mr. Fitzwater's body at a rate of infusion lasting no more than fifteen minutes.

19. The Invanz and the infusion devices into which the Invanz was placed were provided to Mr. Fitzwater by Pharma Care.

20. The Plaintiffs believe and therefore aver that the Invanz and the infusion devices into which the Invanz was placed and the instructions for programming the infusion device to infuse the drug in a proper time frame were provided to Pharma Care by Medicine Shoppe.

21. The Plaintiffs believe and therefore aver that when the Invanz was placed into the infusion device, an incorrect process was used by either Medicine Shoppe or Pharma Care or both of them such that the drug was infused at too rapid of a rate.

22. Because of the improper rate of infusion of the Invanz, Mr. Fitzwater suffered serious and severe injuries, consisting, *inter alia*, of the injuries hereinafter set forth.

23. The hereinafter-described injuries, damages and losses sustained by Mr. Fitzwater and the losses suffered by Mrs. Fitzwater were directly and proximately caused by the Defendants'

careless and negligent conduct, generally and in the following particulars:

(a) In failing to properly insert the Invanz into the infusion device;

(b) In failing to ensure that the infusion device delivered the Invanz at the recommended infusion rate;

(c) In failing to ascertain, before delivering the infusion device to the Plaintiffs, that it had been properly assembled to ensure that it infused the Invanz at the proper rate and

(d) In failing to create and/ or follow proper directions and protocols in the preparation of the infusion device and the establishment of a proper infusion rate..

24. As a direct and proximate result of the foregoing events, Mr. Fitzwater suffered the following injuries, all of which are severe and which may be permanent:

(a) He suffered severe adverse reaction to an infusion of a prescription drug at an excessive rate, consisting inter alia, of severe vomiting and severe nausea;

(b) He suffered severe diarrhea and he continues to sporadically still suffer from severe diarrhea;

(c) He suffered the inability from time to time to ingest food and drink and he continues to sporadically still suffer from the inability from time to time to ingest food and drink;

(d) He suffered an adverse reaction to various medications;

(e) His physicians are concerned that he may still suffer adverse reactions to various medications and for that reason, they are not willing to recommend various medical and surgical procedures that may require the administration of said medications and as a result, he suffers and continues to suffer from the inability to undergo various types of medical procedures due to a possible permanent adverse reaction to surgical procedures;

(f) He suffered bouts of severe vomiting and he continues to sporadically still suffer from bouts of severe vomiting and

(g) He suffered severe and unrelenting pain and he continues to sporadically still suffer from severe pain.

25. As a direct and proximate result of the foregoing, Mr. Fitzwater suffered the following damages:

(a) He has suffered and will continued to suffer great pain, anguish and embarrassment; and

(b) He has incurred medical, hospital, therapy and drug expenses for his diagnosis, treatment, care and recovery for the damages and injuries above-described and he will continue to incur all the same expenses for the same purposes in the future; and

(c) He has incurred a loss of earnings and a loss of earning capacity.

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26. The Plaintiffs incorporate herein by reference Paragraphs 1 through 25 of this Complaint.

27. As a direct and proximate result of the foregoing, Mrs. Fitzwater suffered the following damages:

(a) She has suffered and will continued to suffer the loss of the services, society, companionship and consortium of Mr. Fitzwater, her husband and

(b) She has incurred medical, hospital, therapy and drug expenses for the diagnosis, treatment, care and recovery of Mr. Fitzwater for the damages and injuries above-described and she will continue to incur all the same expenses for the same purposes in the future.

28. The Plaintiffs believe and therefore aver that the damages suffered by each of them exceed the sum of Seventy-Five Thousand ($75,000.00) dollars.

WHEREFORE, the Plaintiffs each respectfully request your Honorable Court to enter judgment in favor of each of them and against MEDICINE SHOPPE INTERNATIONAL, INC., A Corporation and Cais, Inc., d/b/a PHARMA CARE INFUSION SERVICES, INC, A Corporation, jointly and severally, in a sum in excess of $75,000.00.

JURY TRIAL DEMANDED.

Respectfully submitted,

SHERRARD, GERMAN & KELLY, P.C.

By: */s/ Samuel J. Pasquarelli*

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